

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6625
Washington, DC 20230

05/05/2005

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 10/29/2004.

TITLE: Fishermen's Contingency Fund

AGENCY FORM NUMBER(S): 88-164,88-166

ACTION : APPROVED WITH CHANGE

OMB NO.: 0648-0082

EXPIRATION DATE: 05/31/2008

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	400	2,017	1
New	200	1,008	1
Difference	-200	-1,009	0
Program Change		0	0
Adjustment		-1,009	0

TERMS OF CLEARANCE: None

OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated 5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No 6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

**SUPPORTING STATEMENT
FISHERMEN'S CONTINGENCY FUND
OMB CONTROL NO. 0648-0082**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The attached application form is needed by commercial fishermen who file claims against the Fishermen's Contingency Fund. Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1841) authorizes this program which compensates U.S. commercial fishermen for losses of or damages to fishing gear or vessels, plus 50% of resulting gross economic loss, attributable to oil and gas activities on the U.S. Outer Continental Shelf (OCS). Program requirements are set forth in 50 CFR Part 296.

The 15-day report form is needed by claimants for gaining a Presumption that the damage or loss was caused by an item related to OCS oil and gas activities. If a 15-day report is not filed, the claimant must show by a preponderance of evidence that the obstruction causing the damage was related to OCS oil and gas activities. These requirements are set forth in 50 CFR Part 296.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with applicable NOAA Information Quality Guidelines.

The application (NOAA Form 88-164) consists of a section for property loss and a section for economic loss. The property loss section requests identifying information such as the applicants name, address, phone number, and social security number. It also requests information pertaining to the casualty for which compensation is claimed. This includes the name of the claimant's vessel, the location of the obstruction, whether the obstruction was marked, the date the casualty occurred, whether a 15-day report was filed, the amount and type of damage claimed, description of the casualty and likely causes, efforts to recover gear, description of proofs of-ownership included with the-claim and estimates of repair or replacements costs, and identification of witnesses. This information is needed to determine if the claim is timely filed (within 90 days of the casualty), if the casualty occurred in a eligible area (on the OCS in an area affected by oil and gas activities), if it occurred due to eligible causes, the extent of the casualty, and to provide information necessary to verify the facts of the claim. The economic loss section requests information pertaining to economic loss, and consequential damages resulting from the casualty. This includes the length of trips and income from those trips prior to the casualty, number of gear units lost, date replacement gear was ordered and received or the date repairs were commenced and completed. This information is used to determine a reasonable period for replacement or repair of the gear or vessel and the amount of economic loss associated with the casualty. The Fund pays 50% of resulting economic loss. This section also requests information regarding consequential damages such as extra fuel consumption or claim preparation fees. The application

also includes inventory schedules which list the amounts of gear involved in the casualty, its purchase date, purchase cost, and repair or replacement cost. These are used to calculate the amount of compensation for replacement or repair cost. The application also includes an affidavit by which the claimant attests to the truthfulness of his claim.

The 15-day report form (NOAA Form 88-166) requests identifying information such as the claimant's name, address, phone number, and social security number. It also requests information pertaining to the casualty, such as identification of the vessel involved, the location of the obstruction, a description of the casualty, the date and time of the casualty, and the date the vessel first returned to port after the casualty. This information is used to determine if the 15-day report is timely filed and if the casualty occurred in an area affected by OCS oil and gas activities.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Hard copy applications are required because original signatures are required and there are severe penalties for fraud, however, the 15-day report may be submitted telephonically.

4. Describe efforts to identify duplication.

Because NOAA is the sole provider of FCF compensation, there is no duplication of other information collections.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Most respondents are small businesses. The requirements are limited to those necessary to ensure that the Government only reimburses legitimate losses.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Statutorily-mandated financial assistance could not be delivered without this information collection. Since this is an application process, the frequency of response is determined by the respondents.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

By statute the 15-day report requires a response in less than 30 days. This is necessary to help establish that the damage or loss was caused by oil or gas activities.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received

in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice (copy attached) solicited public comment on this renewal. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payments or gifts are made other than the benefits the program disburses.

10. Describe any assurance or confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

No confidentiality is promised.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No sensitive questions are asked, however, the provision of the respondent's social security number or taxpayer identification number is required pursuant to Section 6109 of the Internal Revenue code which requires the preparation of IRS Form 1099s for claim payments.

12. Provide an estimate in hours of the burden of the collection of information.

The estimated burden is as follows:.

Applications: 100 respondents x 1 response x 10 hours/response = 1,000 hours

15-day report: 100 respondents x 1 response x 5 min/response. = 8 hours

Totals: 100 respondents, 200 responses, 1,008 hours

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

Annualized costs per respondent are estimated at \$5.00 (\$3.00 for postage, \$1.00 for copying, and \$1.00 for long distance phone charges for calling in 15-day reports). Based on 100 respondents, this equates to \$500.

14. Provide estimates of annualized cost to the Federal government.

No. of responses x avg response time x avg salary of claims examiner/hr plus 62.8% overhead and benefits = $100 \times 3 \text{ hr} \times \$37.60 + 62.8\% = \$18,364$.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

A decrease in the number of claims filed requires an adjustment to Item 13. A decrease in the number of claims filed as well as a review of the cost per respondent requires an adjustment to the total annual cost burden. However, due to rounding this does not affect the numbers in Item 14. The decrease in the number of claims also requires adjustment of the annualized cost to the Federal Government.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The results will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

N/A.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical methods are not used.

NOAA FORM 88-164 (12-82)		U.S. DEPARTMENT OF COMMERCE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION		OMB APPROVED NO. 0648-0082 Expires xx/xx/xxxx	
FISHERMEN'S CONTINGENCY FUND CLAIM APPLICATION					
PROPERTY LOSS					
CLAIMANT'S NAME				PHONE	
STREET ADDRESS		SOCIAL SECURITY NUMBER		TAX ID NUMBER	
CITY , STATE, ZIP		VESSEL OWNER		VESSEL OPERATOR	
		OWNER/OPERATOR		AMOUNT CLAIMED	
VESSEL NAME AND COAST GUARD OR STATE REGISTRATION NUMBER		I AM CLAIMING THE FOLLOWING AMOUNTS FOR DAMAGE AND/OR LOSS			
		GEAR LOSS		\$	
HOME PORT		GEAR DAMAGE			
VESSEL TYPE		VESSEL LOSS OR DAMAGE			
TONNAGE		ECONOMIC LOSS			
		FUEL			
LOCATIONAL COORDINATES OF OBSTRUCTION (Use Loran C or the next best available method of position fixing.)		OTHER EXPENSES			
		TOTAL			
		DID YOU FILE 15-DAY REPORT? (NOAA Form 88-166) <input type="checkbox"/> NO <input type="checkbox"/> YES		DATE FILED	
IF OBSTRUCTION WAS DRAGGED, AT WHAT LOCATION WAS IT LEFT?		DID YOU RECOVER THE OBSTRUCTION? <input type="checkbox"/> NO <input type="checkbox"/> YES If so, KEEP IT AS EVIDENCE.			
DESCRIBE OBSTRUCTION OR, IF YOU DIDN'T SEE IT, ITS NATURE		WAS A SURFACE MARKER ATTACHED TO OR NEAR THE OBSTRUCTION? <input type="checkbox"/> YES <input type="checkbox"/> NO			
		DO YOU HAVE PHOTOS OF THE OBSTRUCTION OR DAMAGE? <input type="checkbox"/> NO <input type="checkbox"/> YES If so, ATTACH TO CLAIM			
WHY DO YOU BELIEVE THE OBSTRUCTION IS ASSOCIATED WITH OIL AND GAS ACTIVITIES ON THE FEDERAL OUTER CONTINENTAL SHELF RATHER THAN WITH NATURAL CAUSES, OTHER OCEAN USERS, OR OIL AND GAS ACTIVITIES WITHIN STATE WATERS?					
CIRCUMSTANCES OF DAMAGE OR LOSS					
DATE OF INCIDENT		TIME OF DAY		WATER DEPTH	
VISIBILITY		VESSEL'S SPEED		DIRECTION	
ACTIVITY OF VESSEL (Explain the vessel's activity at the time, how captain and crew responded, attempts made to retrieve gear, extent of damage, what crew did after incident. For example, did vessel continue fishing or return to port? If it returned, why? How much time did the incident involve?					
NAMES OF OTHER VESSELS IN THE VICINITY AT TIME OF INCIDENT					
Each claim must contain statements from any material witnesses to the casualty. These may be from crew members or any other person who may have relevant information to substantiate both the fact and the nature of the casualty. Statements should describe the basic circumstances under which the casualty occurred and any knowledge as to the probable or known cause of the casualty.					
NAMES AND ADDRESSES OF WITNESSES WHOSE STATEMENTS ARE ATTACHED. (List and check appropriate box.)					
NAME		<input type="checkbox"/> CREW MEMBER <input type="checkbox"/> OTHER	ADDRESS		PHONE
NAME		<input type="checkbox"/> CREW MEMBER <input type="checkbox"/> OTHER	ADDRESS		PHONE
NAME		<input type="checkbox"/> CREW MEMBER <input type="checkbox"/> OTHER	ADDRESS		PHONE
All claims for fishing vessel or gear casualties must include invoices, receipts, affidavits, cancelled checks, or other acceptable documentation showing proof of purchase of each item claimed.					
KIND OF PROOF OF PURCHASE ATTACHED					
All claims must include an estimate or a receipt for the repair or replacement cost of each item claimed. The estimate or receipt must be from a commercial source unless the gear is repaired or constructed by the applicant. In that case, an itemized list of repair or replacement costs may be submitted in place of a receipt or an estimate from a commercial source.					
KIND OF DOCUMENTATION OF REPAIR OR REPLACEMENT COSTS ATTACHED					

ECONOMIC LOSS CLAIMED

Provide the following data for the calculation of your claim for economic loss: The dates of the trip tickets for the *three trips before that of the casualty* (or if these are not available, three trips closest in time to the casualty); the number of pounds of fish caught (or gear units deployed) on each trip; the number of hours spent fishing (or gear units hauled) on each trip; and the amount you received in payment for the catch on each trip. *Attach copies of the three trip tickets.*

CATCH ON EACH TRIP. Attach copies of the three trip tickets.				
DATE OF TRIP TICKET		NO. POUNDS FISH CAUGHT	NO. DAYS SPENT FISHING	\$ VALUE OF CATCH
From	To			
1				
2				
3				
TOTAL				\$
AVERAGE				\$

AVERAGE INCOME PER DAY

PROVIDE THE FOLLOWING DATA FOR THE COMPENSABLE PERIOD STARTING WITH THE DATE OF THE CASUALTY AND CONTINUING THROUGH THE DATE OF COMPLETION OF REPAIR OR REPLACEMENT.

DATE OF COMPLETION OF REPAIRS/OTHER EVENTS:					
DATE OF TRIP TICKET From To (Date of Casualty)	NO. POUNDS FISH CAUGHT	DAYS SPENT FISHING	\$ VALUE OF CATCH	NO. DAYS LOST	GROSS INCOME LOSS FOR TRIP
1			\$		\$
2					
3					
4					
5 TOTAL			\$		\$
6 AVERAGE			\$		
7 TOTAL CLAIMED FOR ECONOMIC LOSS (50% of total gross income loss)					\$

EXPLAIN YOUR METHOD AND FACTS IN DETERMINING THE AMOUNT YOU ARE CLAIMING FOR ECONOMIC LOSS FOR THE COMPENSABLE PERIOD BETWEEN THE DATE OF THE CASUALTY AND THE DATE OF COMPLETION OF REPAIR OR REPLACEMENT.

Continued on last page.

FUEL *(Complete this section if you are claiming for extra fuel consumed as a result of the incident.)*

DOLLAR AMOUNT CLAIMED FOR EXTRA FUEL CONSUMPTION	NUMBER OF DAYS YOUR FISHING TRIPS USUALLY LAST
ON THE TRIP OF THE INCIDENT, HOW MANY HOURS OF RUNNING TIME WERE USED TO GO FROM YOUR PORT TO FISHING SITE?	ON THE TRIP OF THE INCIDENT, HOW MANY HOURS OF RUNNING TIME WERE USED TO GO FROM FISHING SITE BACK TO PORT?
HOW MANY EXTRA HOURS OF RUNNING TIME ARE YOU CLAIMING AS A RESULT OF THE INCIDENT?	HOW MANY DAYS HAD YOU BEEN FISHING WHEN THE INCIDENT OCCURRED?
HOW MANY GALLONS OF FUEL DOES YOUR VESSEL BURN PER HOUR GOING TO AND FROM FISHING SITES?	WHAT PRICE PER GALLON (<i>Receipts must be submitted</i>) DID YOU PAY FOR THE FUEL BURNED ON THE TRIP OF THE INCIDENT?

EXPLAIN HOW YOU CALCULATED THE AMOUNT YOU'RE CLAIMING FOR EXTRA FUEL CONSUMPTION

☐ Continued on last page.

☐ Continued on last page.

OTHER EXPENSES

List below any other expenses you have incurred as a result of the incident for which your claim is filed. Submit with your claim.

[illegible]

I, _____, a U.S. citizen, am the

OWNER

 OPERATOR of the _____
(CLAIMANT'S NAME) (VESSEL'S NAME)
and have read all of the foregoing statements and supporting documents relating to this claim, and to the best of my knowledge all state-
ments and documents are true and correct.

SIGNATURE

DATE

CRIMINAL PENALTY FOR FRAUDULENT CLAIM. Any person who files a fraudulent claim is subject to criminal prosecution under 18 U.S.C. Section 284 and 1001, each of which, upon conviction, imposes a penalty of not more than a \$10,000 fine and 5 years imprisonment, or both.

Privacy Act Statement
Section 3701 (c) of title 31, United States Code, authorizes collection of this information. This information is part an application for benefits and is required to obtain those benefits. The primary use of social security numbers or taxpayer identification numbers is to verify the identity of the applicant(s) and to allow preparations of IRS 1099s for claim payments as required pursuant to Section 6109 of the Internal Revenue code.

Public reporting burden for this collection of information is estimated to average 5.04 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to National Marine Fisheries Service, Financial Services Division, F/MB5, 1315 East West Hwy., Rm. 13301, Silver Spring, MD 20910.

Confidential name and address information will be released via a NOAA Fisheries website for informational purposes. All other data submitted will be handled as confidential Fishery Statistics. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

REMARKS AND ADDITIONAL INFORMATION

SURROGATION AGREEMENT

I, _____, on behalf of individual/corporation, in consideration of the Compensation received pursuant to the provisions of the Outer Continental Shelf Lands Act Amendments of 1978, Title IV, from the United States of America, represented by the Secretary of Commerce, acting by and through the Administrator for the National Oceanic and Atmospheric Administration (the "Secretary") on the date hereof, I do hereby subrogate, assign, transfer and set over to the Secretary and the Secretary's successors and assigns, any and all rights and remedies, sums of money now due or owing to and nature, which I have had, or now have, or may have arising out of the loss, damage or destruction to our fishing vessel or gear for which the compensation has been granted, I hereby appoint the Secretary, the Secretary's successors and assigns, myself true and lawful attorney and attorneys, with full power of substitution and revocation, for me and in my name, or otherwise, but for the sole use benefit of the said Secretary, the Secretary's successors and assigns, to ask, demand, sue for the said claim or claims, or any part thereof.

I agree to provide the Secretary with all available and relevant information concerning the circumstances surrounding the events leading to the loss, damage or destruction for which the aforementioned compensation has been received. We also undertake to furnish the Secretary with such affidavits or declarations and to give such oral evidence as the Secretary may, in his/her discretion, deem necessary for the lawful pursuit of any claim arising from the aforementioned subrogated rights.

In witness whereof, I have hereunto set my hand and seal on the date indicated below.

Date

Signature

NOAA FORM 88-164 (12-82) FISHERMEN'S CONTINGENCY FUND CLAIM APPLICATION	U.S. DEPARTMENT OF COMMERCE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	OMB APPROVED NO. 0648-0082 Expires 10-31-2001
INSTRUCTIONS TO CLAIMANTS		
<p>I. GENERAL</p> <p>The Fishermen's Contingency Fund is authorized by Title IV of the Outer Continental Shelf Lands Act Amendments of 1978. Its purpose is to compensate commercial fishermen for damage or loss caused by obstructions associated with oil and gas activities on the Outer Continental Shelf (OCS). The Program is administered by the National Marine Fisheries Service, Financial Services Division - F/SF2, 1315 East-West Highway - Room 13138, Silver Spring, MD 20910.</p> <p>PRESUMPTION OF CAUSATION</p> <p>A presumption that the damage or loss was caused by items associated with oil and gas activities on the OCS is allowed if you report the damage or loss to the National Marine Fisheries Service within 15 days after the date your vessel first return to port. If all the criteria of a 15-day report are fulfilled, you need not establish the nature of the damage. If a complete report is not submitted within the 15 day period, the presumption will not be allowed and you will have to prove that the obstruction causing the damage was related to OCS oil and gas activities.</p> <p>FILING YOUR CLAIM</p> <p>You must file, in writing, a complete and accurate claim within 90 days after the date you first discovered your damage or loss. The term "filed" means delivered in person, or mailed (as determined by the date of the postmark) to the Chief, FSD, address above. The Chief, FSD, suggests that claim sheets be sent by registered or certified mail, return receipt requested so you will have a record of receipt of your claim.</p> <p>FAILURE TO MEET FILING REQUIREMENTS</p> <p>The Chief, FSD, may reject your claim, if it does not meet the filing requirements. If your claim is rejected, the Chief, FSD, will give you written notice of the reasons for rejection within 30 days after the date on which your claim was filed. If you don't refile an acceptable claim within 30 days after the date of this written notice, you are not eligible for Fund compensation unless there are extenuating circumstances.</p> <p>AGGREGATING CLAIMS</p> <p>If more than one commercial fisherman suffers loss or damage from the same incident (for example, when several members of the crew lose income due to loss of fishing time), their losses should be included in one claim and submitted on their behalf by the owner or operator of the commercial fishing vessel involved.</p> <p>AMENDMENT TO CLAIMS</p> <p>You may amend your claim any time before the Chief, FSD, issues a final determination.</p>	<p>amounts are reasonable. You will not be compensated for these fees if the claim is denied.</p> <p>(c) OTHER: You may claim for any other consequential damage loss, (except personal injury) incurred as a consequence of the fishing gear damage or loss.</p> <p>III. NEGLIGENCE CLAIMANT</p> <p>An award will be reduced to the extent that the damage or loss was caused by your negligence or fault. Basic grounds for finding a claimant negligent or at fault are listed in the FCF Regulations. Negligence of the owner or operator of fishing gear will affect crew member awards to the same extent that it affects an award to the owner or operator.</p> <p>IV. INSURANCE PROCEEDS</p> <p>An award will be reduced by the amount of any compensation you are entitled to receive from insurance.</p> <p>V. PENALTY FOR FALSE CLAIMS</p> <p>Any person who files a fraudulent claim is subject to prosecution under 18 U.S.C. sections 2187 and 1001, each of which, upon conviction, imposes a penalty of not more than \$10,000 fine and 5 years in prison, or both.</p> <p>VI. DOCUMENTATION REQUIRED</p> <p>Here is a checklist of documents which must be submitted with your claim:</p> <p>(1) With your claim for actual damage:</p> <p>(a) Proof that you purchased the fishing gear damaged or lost. Submit copies of the best evidence available, e.g., sales receipts, affidavits, cancelled checks, or other evidence; and</p> <p>(b) Receipts or estimates showing repair or replacement costs.</p> <p>(i) If you replace your gear or have it repaired before filing your claim, submit a copy of the itemized invoice or receipt for the replacement or repair cost. If you usually repair or construct your own gear, you may submit a detailed estimate of your own repair or construction cost; include receipts for materials used.</p> <p>(ii) If you have not replaced or had your gear repaired before you file your claim, submit one estimate from a commercial fishing gear repair or supply company of the present replacement or repair (whichever applies) cost of the damaged or lost fishing gear. (NOTE: The Chief, Financial Services Division, may require the submission of a second-source estimate.)</p> <p>(2) With your claim for consequential damages:</p> <p>(a) In the case of claims for resulting economic loss, a statement of the amount claimed and the basis for that amount with supporting documentation as follows:</p> <p>(i) Trip tickets for the three vessel trips immediately before the trip during which the casualty was discovered and for the vessel trip immediately following the trip during which the casualty occurred.</p> <p>(ii) A statement of the amount of time involved on each of the vessel trips (or if the casualty involves fixed gear, a statement of the number of gear units hauled on each of these vessel trips.)</p> <p>(iii) A statement of the amount of time lost from fishing because of the damage or loss and a full explanation of why this time period is reasonable.</p> <p>(b) Compensation for resulting economic loss will be based on 50 percent of the gross income lost, as estimated by the Chief, FSD, as a result of not being able to fish; or having to fish at a reduced level of effort during the period before the damaged or lost fishing gear is repaired or replaced and available for use. The period begins on the date of the casualty and stops on the</p>	
<p>II. WHAT CAN BE CLAIMED</p> <p>You may file for actual and consequential damages as follows:</p> <p>(1) Actual Damage:</p> <p>(a) The lesser of the gear's repair or replacement cost, and</p> <p>(b) The reasonable replacement cost for lost fishing gear.</p> <p>(2) Consequential Damage:</p> <p>(a) RESULTING ECONOMIC LOSS: You may claim for gross income loss resulting from time lost because of not being able to fish, or having to reduce fishing effort, during the period before the damaged or lost fishing gear is repaired or replaced and available for use. This period must be reasonable. It begins on the date of the casualty and stops on the date the damage could reasonably have been remedied by repair or replacement.</p> <p>(b) ATTORNEY, CPA, CONSULTANT FEES: You may claim for reasonable fees paid to an attorney, CPA, or other consultant for the preparation of your claim. The Chief, FSD, will determine what</p>	<p>INSTRUCTIONS CONTINUE ON NEXT PAGE.</p>	

INSTRUCTIONS (Contd)

date the damage or loss could reasonably have been remedied by repair or replacement. Appropriate documentation may consist of purchase orders, bills of lading, or statements from commercial repair or supply sources.

(3) In the case of amounts claimed for other consequential damages resulting from the casualty, the claim must include a full description of what each amount represents with suitable documentation.

(4) Photographs (if available) of the obstruction and of any damage to your gear.

(5) The name and mailing address (phone number if available) of each person, if any, to whom you have given oral or written notice that such person caused or may have caused the damage or loss, together with a copy of any written notice given each such person and a statement whether each such person has paid or will pay you for any portion of the damage or loss.

VII. NMFS PROCESSING OF CLAIMS

The National Marine Fisheries Service will process your claim and mail a written initial determination to you within 60 days of the date it is complete with regard to the information required for compensation from the Fund. An initial determination will state (i) if the claim is disapproved, the reason for disapproval, or (ii) if the claim is approved, the amount of compensation and the basis on which amount was determined. If you disagree with the initial determination, you or any other interested person who submitted evidence relating to the initial determination, may request a review of the initial determination. Your written request must be postmarked within 30 days of the date of the initial determination and must fully state your reason(s) for disagreement. If no request for initial review is submitted within 30 days, the initial determination will become a final determination. If a petition for review of an initial determination is timely filed, the Assistant Administrator, NMFS, or his designee will conduct a review of the initial determination, and issue a final determination within 60 days after the day on which the request for review of the initial determination was received.

VIII. PAYMENT OF AWARD FOR CLAIM

(1) When an initial determination becomes final the Chief, FSD, shall immediately disburse the amount awarded if you:

(a) State in writing that you will not petition for review of the initial determination; and

(b) Sign an agreement to repay all or any part of the amount of the award if, the amount of an award should for any reason be subsequently reduced.

If you do not submit the agreements specified above, the Chief, FSD, will not disburse the amount of your award until expiration of 30 days after the issuance of the initial determination.

IX. SUBROGATION

Upon payment of a claim, the Chief, FSD, must obtain a subrogation agreement signed by you which:

(1) Assigns to the Fund your rights against third parties; and

(2) Provides that you will assist the Fund in any reasonable way to pursue those rights.

NOTE: The agreements specified above (Settlement and Subrogation) will be mailed to you along with the Initial Determination. If you accept the Initial Determination, the amount of your award will be disbursed immediately upon receipt of the signed documents.

NOAA FORM 88-166 (12-82)		U.S. DEPARTMENT OF COMMERCE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION		OMB APPROVED NO.0648-0082 Expires XX-XX-XXXX	
FISHERMEN'S CONTINGENCY FUND 15-DAY REPORT					
NOTE: No compensation may be awarded unless a completed application form has been received (Title IV – The Fishermen’s Contingency Fund -- of the Outer Continental Shelf Lands Act Amendment of 1978.					
INSTRUCTIONS					
<p>1. In order to gain a presumption that the damage or loss for which you will file a FCF claim was caused by an item related to OCS oil and gas activities, you must submit the information required by this form to the National Marine Fisheries Service <i>within 15 days after the date your vessel first returned to port after discovering such damage or loss.</i> You may report your damage or loss while at sea by contacting the National Marine Fisheries Service Regional Office by radiotelephone and providing the required information.</p> <p>2. If you radiotelephone the information to meet the 15-day dead-line, you should also confirm the radiotelephone report by sending a completed copy of this form as soon as possible after you return to port to National Marine Fisheries Service, Financial Services Division F/MB5, 1315 East-West Hwy.. Rm. 13301, Silver Spring, MD 20910, Phone: (301) 713-2396.</p> <p>3. Please remember that in addition to this 15-day report, you must also send a <i>completed claim</i> to the Financial Services Division, NMFS, at the above address <i>within 90 days after the damage was first discovered.</i> Please call or write that office or your regional office if you need advice on how to submit a complete claim.</p>			<p>Privacy Act Statement</p> <p>Section 3701 © of title 31, United States Code, authorizes collection of this information. This information is part of an application for benefits and is required to obtain those benefits. The primary use of social security numbers or taxpayer identification numbers is to verify the identity of the applicant(s) and to allow preparation of IRS Form 1099s for claim payments as required pursuant to Section 6109 of the Internal Revenue code.</p> <p>Public reporting burden for this collection of information is estimated to average 5.04 hours per response, including the time for review-instructions, searching exiting data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to National Marine Fisheries Service, Financial Services Division, F/MB5, 1315 East West Hwy.,Rm. 13301, Silver Spring, MD 20910.</p> <p>Confidential name and address information will be released via a NOAA Fisheries website for informational purposes. All other data submitted will be handled as confidential material in accordance with NOAA Administrative Order 216-100, Protection of Confidential Fishery Statistics. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.</p>		
CORPORATE NAME		TAX IDENTIFICATION NUMBER			
NAME		SOCIAL SECURITY NUMBER		DATE	
ADDRESS				PHONE NO.	
VESSEL’S NAME				VESSEL NUMBER	
LOCATION OF OBSTRUCTION (Use Loran C or the next best available method of position fixing.)					
DESCRIPTION OF THE NATURE OF DAMAGE OR LOSS					
DATE AND TIME OF DISCOVERY OF DAMAGE OR LOSS					
DATE VESSEL FIRST RETURNED TO PORT (Unless 15-Day Report was made before vessel returned)					
REMARKS					

PAPERWORK REDUCTION ACT STATEMENT
NOAA FORM 88-164 and 88-166

1. Policy reasons for this information collection:

Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1841) authorizes this program which compensates U.S. commercial fishermen for losses of or damages to fishing gear or vessels, plus 50% of resulting gross economic loss, attributable to oil and gas activities on the U.S. Outer Continental Shelf (OCS). To obtain these benefits applicants must submit information required by the statute and regulations. Program requirements are set forth in 50 CFR Part 296.

2. How the information will be used:

The information collected is necessary to determine eligibility and type and amount of assistance requested by applicants.

3. Annual burden estimate:

Public reporting burden for this collection of information is estimated to average 10 hours per a NOAA Form 88-164 and 5 minutes per 88-166, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Financial Services Division, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

4. Are responses voluntary?

Responses consist of applications for benefits and are required to obtain those benefits.

5. Are responses treated as confidential records?

No confidentiality is promised.

Notwithstanding any other provision of the law, no person is required to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a valid OMB Control Number.

SUBCHAPTER H-J [RESERVED] SUBCHAPTER K—CONTINENTAL SHELF

PART 296—FISHERMEN'S CONTINGENCY FUND

- Sec.
- 296.1 Purpose.
- 296.2 Definitions.
- 296.3 Fishermen's contingency fund.
- 296.4 Claims eligible for compensation.
- 296.5 Instructions for filing claims.
- 296.6 NMFS processing of claims.
- 296.7 Burden of proof and presumption of causation.
- 296.8 Amount of award.
- 296.9 Initial determination.
- 296.10 Agency review.
- 296.11 Final determination.
- 296.12 Payment of costs.
- 296.13 Payment of award for claim.
- 296.14 Subrogation.
- 296.15 Judicial review.

AUTHORITY: Pub. L. 97-212 (43 U.S.C. 1841 et seq.).

SOURCE: 47 FR 49600, Nov. 1, 1982, unless otherwise noted.

§ 296.1 Purpose.

These regulations implement title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended (title IV). Title IV establishes a Fishermen's Contingency Fund to compensate commercial fishermen for damage or loss caused by obstructions associated with oil and gas activities on the Outer Continental Shelf.

§ 296.2 Definitions.

Area affected by Outer Continental Shelf activities means the area within a 3-mile radius of any casualty site which:

- (1) Includes any portion of a leased block, pipeline, easement, right of way, or other OCS oil and gas exploration, development, or production activity; or
- (2) Is otherwise associated (as determined by the Chief, Financial Services Division) with OCS oil and gas activities, such as, for example, expired lease areas, relinquished rights-of-way or easements, and areas used extensively by surface vessels supporting OCS oil and gas activities (areas landward of the OCS are included when such areas meet this criterion).

Chief, FSD means Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713-2396.

Citizen of the United States means any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

Commercial fisherman means any citizen of the United States who owns, operates, or is employed on a commercial fishing vessel.

Commercial fishing vessel means any marine craft which is documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and used for commercial fishing or activities directly related to commercial fishing.

Easement means a right of use or easement granted under 30 CFR 250.18.

Fish means all forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

Fishing gear means any commercial fishing vessel, and any equipment of such vessel.

Fund means the Fishermen's Contingency Fund established by title IV of the Outer Continental Shelf Lands Act Amendments of 1978.

Holder means the owner of record of each lease, prelease exploratory drilling permit, easement, or right-of-way or any agent or assignee of an owner.

Lease means any authority under section 8 or section 6 of the OCS Lands Act to develop and produce or explore for oil or gas.

Negligence or fault includes, but is not limited to, failure to:

- (1) Remain outside of any navigation safety zone established around oil and gas rigs and platforms by any responsible Federal agency;
- (2) Avoid obstructions recorded on nautical charts or in the Notice to Mariners or marked by a buoy or other surface marker (casualties occurring

within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve negligence or fault of the claimant);

(3) Abide by established rules of the road;

(4) Use proper care; or

(5) Use due care and diligence to mitigate the damage or loss.

Outer Continental Shelf means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. section 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control. Generally, but not in all cases, this includes all submerged lands lying seaward of the territorial sea (3 miles from a State's coastline, or 9 miles from the coast of Texas or Florida).

Person means an individual, partnership, corporation, association, public or private organization, government, or other entity.

Resulting Economic Loss means the gross income, as estimated by the Chief, FSD, that a claimant will lose because of not being able to fish, or having to reduce fishing effort, during the period before the damaged or lost fishing gear concerned is repaired or replaced and available for use. This period must be reasonable. This period begins on the date of the casualty and stops on the date the damage could reasonably have been remedied by repair or replacement.

Right-of-way means any right-of-way granted under section 5(e) of the OCS Lands Act or under 43 CFR 3340.0-5.

Secretary means the Secretary of Commerce or his designee.

[47 FR 49600, Nov. 1, 1982, as amended at 61 FR 6322, Feb. 20, 1996]

§ 296.3 Fishermen's contingency fund.

(a) *General.* There is established in the Treasury of the United States the Fishermen's Contingency Fund. The Fund is available without fiscal year limitation as a revolving fund to carry out the purposes of title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended.

(b) *Payments into the fund.* Each Holder of an exploration permit, lease, easement, or rights-of-way for the construction of a pipeline, or a prelease

exploration drilling permit issued or maintained under the Outer Continental Shelf Lands Act, in effect on or after June 30, 1982, shall pay assessments to the Fund. All pipeline right-of-way and easements are to be included for assessment except those constructed and operated lines within the confines of a single lease or group of contiguous leases under unitized operation or single operator. Payments will not be required for geological or geophysical permits, other than prelease exploratory drilling permits issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340).

(1) *Assessments to maintain the fund.* When the total amount in the Fund is less than the Chief, FSD, determines is needed to pay Fund claims and expenses, the Chief, FSD, will notify the Secretary of the Interior that additional assessments are needed.

(2) *Billing and collections.* The Secretary of the Interior will calculate the amounts to be paid by each Holder and shall notify each Holder of the dollar amount and the time and place for all payments. Each assessment shall be paid to the Secretary of the Interior no later than 45 days after the Secretary of the Interior sends notice of the assessment.

(3) *Annual assessment limits.* No Holder shall be required to pay in excess of \$5,000 for any lease, permit, easement or right-of-way in any calendar year.

(c) *Moneys recovered through subrogation.* Any moneys recovered by the Secretary through the subrogation of a claimant's rights shall be deposited into the Fund.

(d) *Investments of the fund.* Excess sums in the Fund will be invested in obligations of, or guaranteed by, the United States. Revenue from such investments shall be deposited in the Fund.

(e) *Litigation.* The Fund may sue and be sued in its own name.

§ 296.4 Claims eligible for compensation.

(a) *Claimants.* Damage or loss eligible for Fund compensation must be suffered by a commercial fisherman.

(b) *Damage or loss of fishing gear.* Damage or loss is eligible for Fund

compensation if it was caused by materials, equipment, tools, containers, or other items associated with OCS oil and gas exploration, development, or production activities. Damage or loss may be eligible for compensation even though it did not occur in OCS waters if the item causing the damage or loss was associated with oil and gas exploration, development, or production activities in OCS waters.

(c) *Exceptions.* Damage or loss is not eligible for Fund compensation:

(1) If the damage or loss was caused by the negligence or fault of the claimant;

(2) If the damage or loss occurred prior to September 18, 1978;

(3) To the extent that damage or loss exceeds the replacement value of the fishing gear involved;

(4) For any portion of the damage or loss which can be compensated by insurance;

(5) If the claim is not filed within 90 calendar days of the date the claimant or the claimant's agent first became aware of the damage or loss (or such longer period as the Secretary may allow under unusual and extenuating circumstances); or

(6) If the damage or loss was caused by an obstruction unrelated to OCS oil and gas exploration, development, or production activities.

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985; 61 FR 6322, Feb. 20, 1996]

§ 296.5 Instructions for filing claims.

(a) *Fifteen-day report required to gain presumption of causation—(1) General.* Damages or losses are presumed to be qualified for compensation if certain requirements are satisfied. One requirement is that a report must be made to NMFS within fifteen (15) days after the date on which the vessel first returns to a port after discovering the damage or loss. Filing of a fifteen-day report must be followed up by filing a detailed claim.

(2) *When and how to file a fifteen-day report.* To qualify for the presumption of causation, a fifteen-day report must be made to NMFS within fifteen days after the date on which the vessel first returns to a port after discovering the damage or loss. Satisfaction of the fif-

teen-day requirement is determined by the postmark, if the report is mailed; by the date of a call, if the report is telephoned or radiotelephoned; or, by the date of appearance, if the report is made in person. The fifteen-day report must be made to the Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713-2396.

(3) *Contents of fifteen-day report.* Each fifteen-day report must include the following information:

(i) The claimant's name and address;

(ii) The name of the commercial fishing vessel involved;

(iii) The location of the obstruction which caused the damage or loss;

(iv) A description of the nature of the damage or loss;

(v) The date such damage or loss was discovered;

(vi) If the fifteen-day report is made after the vessel returns to port, the date on which the vessel first returned to port after discovering the damage.

(b) *Form of claim.* Claims must be in writing. Claims may be submitted on NOAA form 88-164. This form may be obtained from any NMFS regional office or from the Chief, FSD. Although claimants are not required to use this claim form, it will probably be to their benefit to do so.

(c) *Who must file and when and where to file claims.* All claimants (including those who filed 15-day reports to gain the presumption of causation) must submit a claim application to the Chief, Financial Services Division, within 90 calendar days of the date the claimant or the claimant's agent first became aware of the damage or loss. The Chief, FSD, may allow a longer period for filing claims if, in his discretion, unusual and extenuating circumstances justify a longer period. The term "filed" means delivered in person, or mailed (as determined by the date of the postmark) to the Chief, Financial Services Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Washington, DC 20235. The Chief, FSD, suggests that mailed claims be sent by registered or certified mail, return receipt requested, so the claimant will have a record that

the claim was received by the Chief, FSD.

(d) *Aggregating claims.* If more than one commercial fisherman suffers loss or damage from the same incident (for example, when several members of the crew lost income due to loss of fishing time), all claims should be submitted on their behalf by the owner or operator of the commercial fishing vessel involved.

(e) *Contents of claim.* Each claim must be signed by the claimant and must accurately and completely provide the following information:

(1) The name, mailing address, telephone number, citizenship, and occupational status (for example, vessel owner, operator, or crew member) of each claimant;

(2) The name and Coast Guard documentation number or State registration number of the commercial fishing vessel involved in the damage or loss;

(3) The home port, type, and size of the vessel involved in the casualty;

(4) A full statement of the circumstances of the damage or loss including:

(i) The date when the casualty was first discovered by the claimant,

(ii) The water depth (if known) and visibility at the time and location where the casualty occurred,

(iii) The direction, speed, and activities of the claimant's vessel immediately before, during, and after the casualty (including a full description of both the deployment of any fishing gear which is the subject of the claim and all attempts at retrieval of the gear),

(iv) The names and addresses of all witnesses to the casualty,

(v) The location where the casualty occurred in Loran C coordinates or the next most accurate method of position fixing available to the claimant,

(vi) A description of the item or obstruction (if sighted or recovered) which caused the casualty, and whether or not any surface markers were attached to or near the obstruction. Submit any available photographs of the item or obstruction. State reasons for believing the obstruction is associated with OCS oil and gas activities.

(5) The amount claimed for property damage or loss and a full statement of

the type and extent of damage or loss including:

(i) An inventory of all components of fishing gear damaged or lost,

(ii) The date, place, and cost of acquisition of all fishing gear damaged or lost and proof of its purchase (sales receipts, affidavits, or other evidence),

(iii) One estimate from a commercial fishing gear repair or supply company of the present replacement or repair (whichever applies) cost of the damaged or lost fishing gear. If the gear will be repaired by the claimant himself, a detailed estimate by the claimant identifying the repair cost.

(6) The amount claimed for economic loss and the basis for that amount with supporting documentation, as follows:

(i) Trip tickets for the three vessel trips immediately before the trip during which the casualty was discovered and for the vessel trip immediately following the trip during which the casualty occurred.

(ii) A statement of the amount of time involved on each of the vessel trips above (or if the casualty involves fixed gear, a statement of the number of gear units deployed on each of these trips).

(iii) A statement of the amount of time lost from fishing because of the damage or loss and a full explanation of why this time period is reasonable.

(iv) Documentation of the date replacement gear was ordered and received or the date gear repair began and ended. This documentation may consist of purchase orders, bills of lading, or statements from sellers or repairers.

(7) The amount claimed for other consequential loss or costs (including fees for claim preparation, etc.) with suitable documentation of the amounts claimed (such as invoices, receipts, etc.).

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985; 53 FR 24645, June 29, 1988; 61 FR 6322, Feb. 20, 1996]

§ 296.6 NMFS processing of claims.

(a) *Action by NMFS.* Upon receipt of a claim, the Chief, FSD, will:

(1) Send an abstract of the claim to the Secretary of the Interior;

(2) Send the reported location of any obstruction which was not recovered

§ 296.7

and retained to the National Ocean Survey, which will inform the Defense Mapping Agency Hydrographic/Topographic Center.

(b) *Actions by the Interior Department.* Upon receipt of an abstract of a claim, the Interior Department will immediately:

(1) Plot the casualty site, and advise NMFS whether the site is in an area affected by OCS activities;

(2) make reasonable efforts to notify all persons known to have engaged in activities associated with OCS energy activity in the vicinity where the damage or loss occurred.

(c) *Responses to notice of claim.* (1) Each person notified by the Interior Department will, within thirty days after receipt of the notice, advise the Chief, FSD, and the Interior Department whether he admits or denies responsibility for the damages claimed.

(2) Each person notified by the Interior Department who fails to give timely and proper advice of admission or denial of responsibility shall be presumed to deny responsibility for the damages claimed.

(3) If any person admits responsibility, the Chief, FSD, will initiate action to recover from that party any sums paid or to be paid for the claimed damages.

(4) Any person referred to in this section, including lessees or permittees or their contractors or subcontractors, may submit evidence about any claim to the Chief, FSD.

(d) *Failure to meet filing requirements.* The Chief, FSD, may reject any claim that does not meet the filing requirements. The Chief, FSD, will give a claimant whose claim is rejected written notice of the reasons for rejection within 30 days after the date on which the claim was filed. If the claimant does not refile an acceptable claim within 30 days after the date of this written notice, the claimant is not eligible for Fund compensation unless there are extenuating circumstances.

(e) *Proceedings*—(1) *Location.* Any required proceeding will be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Assistant Administrator, NMFS, or his designee, or if no agreement can be reached, within

50 CFR Ch. II (10–1–00 Edition)

the United States judicial district in which the claimant's home port is located.

(2) *Powers.* For purposes of any proceeding, the Assistant Administrator, NMFS, or his designee, shall have the power to administer oaths and subpoena witnesses and the production of books, records, and other evidence relative to the issues involved.

(3) *Amendments to claims.* A claimant may amend the claim at any time before the Chief, FSD, issues an initial determination.

(4) *Criminal penalty for fraudulent claims.* Any person who files a fraudulent claim is subject to prosecution under 18 U.S.C. sections 287 and 1001, each of which, upon conviction, imposes a penalty of not more than a \$10,000 fine and 5 years' imprisonment, or both.

[47 FR 49600, Nov. 1, 1982, as amended at 61 FR 6322, Feb. 20, 1996]

§ 296.7 Burden of proof and presumption of causation.

(a) *Burden of proof.* The claimant has the burden to establish, by a preponderance of the evidence, all facts necessary to qualify his claim, including:

(1) The identity or nature of the item which caused the damage or loss; and

(2) That the item is associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

(b) *Presumption of causation.* Notwithstanding the above, damages or losses are presumed to be caused by items associated with oil and gas exploration, development, or production activities on the OCS if the claimant establishes that:

(1) The claimant's commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas exploration, development, or production activities;

(2) A report on the location of the obstruction which caused such damage or loss, and the nature of such damage or loss, was made within fifteen days after the date on which the vessel first returned to a port after discovering such damage;

(3) There was no record on the most recent nautical charts issued by the

National Ocean Survey, NOAA, or in any weekly Notice to Mariners issued by the Defense Mapping Agency Hydrographic/Topographic Center, in effect at least 15 days before the date the damage or loss occurred, then an obstruction existed in the immediate vicinity where the damage or loss occurred. In the case of damages caused by a pipeline, the presumption will be available regardless of whether the pipeline was recorded on charts or in the Notice to Mariners; and

(4) There was no proper surface marker or lighted buoy attached, or closely anchored, to such obstruction.

(c) *Geographic exclusion from presumption of causation.* Damage or loss occurring within a one-quarter mile radius of obstructions recorded on charts or in a Notice to Mariners, or properly marked, is presumed to involve the recorded or marked obstruction.

§ 296.8 Amount of award.

(a) *Actual damages.* The award for damaged fishing gear will be the lesser of the gear's repair cost or replacement cost. The award for lost fishing gear will be the gear's replacement cost.

(b) *Consequential damages.* An award may also include compensation for any damage or loss (except personal injury) that is incurred as a consequence of the fishing gear damage or loss.

(c) *Resulting economic loss.* An award may also include 50 percent of the resulting economic loss from damage to or loss of fishing vessels and gear.

(d) *Attorney, CPA, consultant fees.* An award may also include compensation for reasonable fees paid by the claimant to an attorney, CPA, or other consultant for the preparation or prosecution of a claim.

(e) *Negligence of claimant.* (1) An award will be reduced to the extent that the loss or damage was caused by the negligence or fault of the claimant. (For example, a claimant who sustained \$10,000 in damages and whose negligence or fault was found to be responsible for 40% of the damage would receive \$6,000 in compensation. If the same claimant were responsible for 99% of the negligence or fault that caused the damage, the claimant would receive \$100 in compensation).

(2) Negligence of the owner or operator of the fishing vessel or gear will reduce crewmember awards to the same extent that it reduces an award to the vessel's owner or operator.

(f) *Insurance proceeds.* An award will be reduced by the amount the claimant has, or reasonably would have, received under a commercial policy of full hull and machinery and protection and indemnity insurance, whether or not such insurance was in effect at the time the casualty occurred.

[47 FR 49600, Nov. 1, 1982, as amended at 50 FR 13796, Apr. 8, 1985]

§ 296.9 Initial determination.

The Chief, FSD will make an initial determination on a claim within 60 days after the day on which the claim is accepted for filing. The initial determination will state:

(a) If the claim is disapproved, the reason for disapproval, or

(b) If the claim is approved, the amount of compensation and the basis on which the amount was determined.

§ 296.10 Agency review.

(a) Within 30 days after the Chief, FSD, issues an initial determination, the claimant, or any other interested person who submitted evidence relating to the initial determination, may ask the Assistant Administrator, NMFS, or his designee, for a review of the initial determination.

(b) The petitioner may submit written or oral evidence within 30 days of filing the petition for review.

§ 296.11 Final determination.

(a) If a petition for review of an initial determination is filed within 30 days after the date the Chief, FSD, issues an initial determination, the Assistant Administrator, NMFS, or his designee will conduct a review of the initial determination, and will issue a final determination no later than 60 days after receipt of the request for review of the initial determination.

(b) If a petition for review of an initial determination is not filed within 30 days after the day on which the Chief, FSD, issues an initial determination, the initial determination will become a final determination.

§ 296.12

§ 296.12 Payment of costs.

(a) *By person denying responsibility for damage.* Any person who is notified by the Interior Department and fails to respond or denies responsibility for the damages claimed will pay the costs of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(b) *By the claimant.* Any claimant who files a claim will pay the cost of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(c) *By person denying responsibility for damage and the claimant.* If more than one party is found to have responsibility for the damage claimed, then the cost of the proceedings will be apportioned between them.

§ 296.13 Payment of award for claim.

(a) Upon an initial determination, the Chief, Financial Services Division, shall immediately disburse the claim awarded if the claimant signed as part of his/her application a statement agreeing to repay all or any part of the award if the award should for any reason be subsequently reduced.

(b) [Reserved]

[61 FR 6322, Feb. 20, 1996]

50 CFR Ch. II (10–1–00 Edition)

§ 296.14 Subrogation.

(a) The claim application will contain a subrogation statement signed by the claimant as a condition of payment of the claim which:

(1) Assigns to the Fund the claimant's rights against third parties; and

(2) Provides that the claimant will assist the Fund in any reasonable way to pursue those rights.

(b) Collection of subrogated rights. If a reasonable chance of successful collection exists, NMFS will refer any subrogated rights to the Justice Department for collection.

(c) Any moneys recovered through subrogation shall be deposited into the Fund.

[47 FR 49600, Nov. 1, 1982, as amended at 61 FR 6323, Feb. 20, 1996]

§ 296.15 Judicial review.

Any claimant or other person who is aggrieved by a final determination may, no later than 30 days after the termination, seek judicial review of the determination in the United States District Court for such judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States District Court for the judicial district in which the claimant's home port is located.

Sec. 1841. Definitions

As used in this subchapter, the term -

- (1) "area affected by Outer Continental Shelf activities" means any geographic area:
 - (A) which is under oil or gas lease on the Outer Continental Shelf;
 - (B) where Outer Continental Shelf exploration, development or production activities have been permitted, except geophysical activities;
 - (C) where pipeline rights-of-way have been granted; or
 - (D) otherwise impacted by such activities including but not limited to expired lease areas, relinquished rights-of-way and easements, Outer Continental Shelf supply vessel routes, or other areas as determined by the Secretary;
- (2) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State, or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other chief executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth, or naturalization, and which has at least 75 per centum of the interest of [\[1\]](#) therein owned by citizens of the United States. Seventy-five per centum of the interest in the corporation shall not be deemed to be owned by citizens of the United States -
 - (A) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States;
 - (B) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States;
 - (C) if through any contract or understanding it is so arranged that more than 25 per centum of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or
 - (D) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States;
- (3) "commercial fisherman" means any citizen of the United

States who owns, operates, or derives income from being employed on a commercial fishing vessel;

- (4) "commercial fishing vessel" means any vessel, boat, ship, or other craft which is (A) documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and (B) used for, equipped to be used for, or of a type which is normally used for commercial purposes for the catching, taking, or harvesting of fish or the aiding or assisting of any activity related to the catching, taking, or harvesting of fish, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing;
 - (5) "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species;
 - (6) "fishing gear" means (A) any commercial fishing vessel, and (B) any equipment of such vessel, whether or not attached to such a vessel;
 - (7) "Fund" means the Fishermen's Contingency Fund established under section [1842](#) of this title; and
 - (8) "Secretary" means the Secretary of Commerce or the designee of such Secretary.
-

Footnotes

[\[1\]](#) So in original. The "of" is probably unnecessary.

Sec. 1842. Fishermen's Contingency Fund

- (a) Establishment; availability; source of deposits; limitation on amount; interest-bearing accounts; litigation
 - (1) There is established in the Treasury of the United States a Fishermen's Contingency Fund. The Fund shall be available to the Secretary without fiscal year limitations as a revolving fund for the purpose of making payments pursuant to this section. The Fund shall consist of -
 - (A) revenues received from investments made under paragraph (3);
 - (B) amounts collected under subsection (b) of this section; and
 - (C) amounts recovered by the Secretary under section [1845](#)(h)(2) of this title. The total amount in the Fund that is collected under subsection (b) of this section may at no time exceed \$2,000,000; and the total amount in the Fund which is attributable to revenue received under paragraph (3) or recovered by the Secretary under section [1845](#)(h)(2) of this title shall be expended prior to amounts collected under subsection (b) of this section. Not more than 8 percent of the total amount in the Fund may be expended in any fiscal year for paying the administrative and personnel expenses referred to in paragraph (2)(A).
 - (2) The Fund shall be available, as provided for in appropriation Acts solely for the payment of -
 - (A) the personnel and administrative expenses incurred in carrying out this subchapter;
 - (B) any claim, in accordance with procedures established under this section, for damages that are compensable under this subchapter; and
 - (C) attorney and other fees awarded under section 1845(e) of this title with respect to any such claim.
 - (3) Sums in the Fund that are not currently needed for the purposes of the Fund shall be kept on deposit in appropriate interest-bearing accounts that shall be established by the Secretary of the Treasury or invested in obligations of, or guaranteed by, the United States. Any revenue accruing from such deposits and investments shall be deposited into the Fund.
 - (4) The Fund may sue and be sued in its own name. All litigation by or against the Fund shall be referred to the Attorney General.
- (b) Payments by each holder of lease, permit, easement, or right-of-way
 - (1) Except as provided in paragraph (2), each holder of a lease that is issued or maintained under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and each holder of an exploration permit, or an easement or right-of-way for the construction of a pipeline in any area of the Outer Continental Shelf, shall pay an amount specified by the Secretary. The Secretary of the Interior shall collect such amount and deposit it into the Fund. In any calendar year, no holder of a lease, permit, easement, or right-of-way shall be required to pay an amount in excess of \$5,000 per lease, permit, easement, or right-of-way.

- (2) Payments may not be required under paragraph (1) by the Secretary of the Interior with respect to geological permits and geophysical permits, other than prelease exploratory drilling permits issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340).

Sec. 1843. Duties and powers of Secretary

- (a) Prescription and amendment of regulations respecting settlement of claims; identification classification of potential hazards to commercial fishing

In carrying out the provisions of this subchapter, the Secretary shall -

- (1) prescribe, and from time to time amend, regulations for the filing, processing, and fair and expeditious settlement of claims pursuant to this subchapter, including a time limitation of not less than 90 days on the filing of such claims (except that, notwithstanding any other provision of law, final regulations implementing the 1981 amendments to this subchapter shall be published in the Federal Register within 120 days after the date of the enactment of such amendments); and
- (2) identify and classify all potential hazards to commercial fishing caused by Outer Continental Shelf oil and gas exploration, development, and production activities, including all obstructions on the bottom, throughout the water column, and on the surface.

- (b) Establishment of regulations respecting color coding, stamping, or labeling of equipment, tools, etc., used on Outer Continental Shelf

The Secretary of the Interior shall establish regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use.

- (c) Disbursement of payments to compensate commercial fishermen; restrictions

- (1) Payments shall be disbursed by the Secretary from the Fund to compensate commercial fishermen for actual and consequential damages, including resulting economic loss, due to damages to, or loss of, fishing gear by materials, equipment, tools, containers, or other items associated with Outer Continental Shelf oil and gas exploration, development, or production activities. The compensation payable under this section for resulting economic loss shall be an amount equal to 50 per centum of such loss. For purposes of this subsection, the term "resulting economic loss" means the gross income, as estimated by the Secretary, that a commercial fisherman who is eligible for compensation under this section will lose by reason of not being able to engage in fishing, or having to reduce his fishing effort, during the period before the damaged or lost fishing gear concerned is repaired or replaced and available for use.
- (2) Notwithstanding the provisions of paragraph (1) of this subsection, no payment may be made by the Secretary from the Fund -
 - (A) to the extent that damages were caused by the negligence or fault of the commercial fisherman making the claim;
 - (B) if the damage set forth in the claim was sustained prior to September 18, 1978;

- (C) in the case of a claim for damage to, or loss of, fishing gear, in an amount in excess of the replacement value of the fishing gear with respect to which the claim is filed; and
- (D) for any portion of the damages claimed with respect to which the claimant has received, or will receive, compensation from insurance.

Sec. 1844. Burden of proof

With respect to any claim for damages filed under this subchapter, there shall be a presumption that such damages were due to activities related to oil and gas exploration, development, or production if the claimant establishes that -

- (1) the commercial fishing vessel was being used for fishing and was located in an area affected by Outer Continental Shelf activities;
- (2) a report on the location of the material, equipment, tool, container, or other item which caused such damages and the nature of such damages was made within fifteen days after the date on which the vessel first returns to a port after discovering such damages;
- (3) there was no record on the latest nautical charts or Notice to Mariners in effect at least 15 days prior to the date such damages were sustained that such material, equipment, tool, container, or other item existed where such damages occurred, except that in the case of damages caused by a pipeline, the presumption established by this section shall obtain whether or not there was any such record of the pipeline on the damage date; and
- (4) there was no proper surface marker or lighted buoy which was attached or closely anchored to such material, equipment, tool, container, or other item.

Sec. 1845. Claims procedure

- (a) Filing requirement; time to file
Any commercial fisherman suffering damages compensable under this subchapter may file a claim for compensation with the Secretary under subsection (d)(1) of this section.
- (b) Transmittal of copy of claim to Secretary of the Interior;
reference to Secretary
Upon receipt of any claim under this section, the Secretary shall transmit a copy of the claim to the Secretary of the Interior and shall take such further action regarding the claim that is required under subsection (d) of this section.
- (c) Notification to persons engaged in activities associated with
Outer Continental Shelf energy activities; response of persons
notified; submittal of evidence
The Secretary of the Interior shall make reasonable efforts to notify all persons known to have engaged in activities associated with Outer Continental Shelf energy activity in the vicinity. Each such person shall promptly notify the Secretary and the Secretary of the Interior as to whether he admits or denies responsibility for the damages claimed. Any such person, including lessees or permittees or their contractors or subcontractors, may submit evidence at any proceeding conducted with respect to such claim.
- (d) Acceptance of claim by Secretary; time to render decision;
review of initial determination
 - (1) The Secretary shall, under regulations prescribed pursuant to section [1843](#)(a) of this title, specify the time, form and manner in which claims must be filed.
 - (2) The Secretary may not accept any claim that does not meet the filing requirements specified under paragraph (1), and shall give a claimant whose claim is not accepted written notice of the reasons for nonacceptance. Such written notice must be given to the claimant within 30 days after the date on which the claim was filed and if the claimant does not refile an acceptable claim within 30 days after the date of such written notice, the claimant is not eligible for compensation under this subchapter for the damages concerned; except that the Secretary -
 - (A) shall in any case involving a good faith effort by the claimant to meet such filing requirements, or
 - (B) may in any case involving extenuating circumstances, accept a claim that does not meet the 30-day refiling requirement.
 - (3)
 - (A) The Secretary shall make an initial determination with respect to the claim within 60 days after the day on which the claim is accepted for filing. Within 30 days after the day on which the Secretary issues an initial determination on a claim, the claimant, or any other interested person who submitted evidence relating to the initial determination, may petition the Secretary for a review of that determination.
 - (B) If a petition for the review of an initial determination is not filed with the Secretary within the 30-day period provided under subparagraph (A), the initial determination shall thereafter be treated as a final determination by the Secretary on

the claim involved.

- (C) If a petition for review of an initial determination is timely filed under subparagraph (A), the Secretary shall allow the petitioner 30 days after the day on which the petition is received to submit written or oral evidence relating to the initial determination. The Secretary shall then undertake such review and, on the basis of such review, issue a final determination no later than the 60th day after the day on which the Secretary received the petition for review of an initial determination.

- (e) Claim preparation fees; attorney's fees

If the decision of the Secretary under subsection (d) of this section is in favor of the commercial fisherman filing the claim, the Secretary, as a part of the amount awarded, shall include reasonable claim preparation fees and reasonable attorney's fees, if any, incurred by the claimant in pursuing the claim.

- (f) Powers of Secretary

- (1) For purposes of any proceeding conducted pursuant to this section, the Secretary shall have the power to administer oaths and subpoena the attendance or testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues being presented for determination.
- (2) In any proceeding conducted pursuant to this section with respect to a claim for damages resulting from activities on any area of the Outer Continental Shelf, the Secretary shall consider evidence of obstructions in such area which have been identified pursuant to the survey conducted under section [1847 \[1\]](#) of this title.

- (g) Place of proceeding

Any proceeding conducted with respect to an initial determination on a claim under subsection (d)(3)(A) of this section shall be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Secretary or, if no agreement can be reached, within the United States judicial district in which the home port of the claimant is located.

- (h) Certification and disbursement of award; subrogation of rights; payment of costs of proceedings

- (1) The amount awarded in an initial determination by the Secretary under subsection (d) of this section shall be immediately disbursed, subject to the limitations of this section, by the Secretary if the claimant -
 - (A) states in writing that he will not petition for review of the initial determination; and
 - (B) enters into an agreement with the Secretary to repay to the Secretary all or any part of the amount of the award if, after review under subsection (d)(3)(C) of this section or, if applicable, after judicial review, the amount of the award, or any part thereof, is not sustained.
- (2) Upon payment of a claim by the Secretary pursuant to this subsection, the Secretary shall acquire by subrogation all rights of the claimant against any person found to be responsible for the damages with respect to which such claim was made. Any moneys recovered by the Secretary through subrogation shall be deposited into the Fund.
- (3) Any person who denies responsibility for damages with respect to which a claim is made

and who is subsequently [\[2\]](#) found to be responsible for such damages, and any commercial fisherman who files a claim for damages and who is subsequently found to be responsible for such damages, shall pay the costs of the proceedings under this section with respect to such claim.

- (i) Judicial review

Any claimant or other person who suffers a legal wrong or who is adversely affected or aggrieved by a final determination of the Secretary under subsection (d) of this section, may, no later than 30 days after such determination is made, seek judicial review of the determination in the United States district court for such United States judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States district court for the United States judicial district in which is located the home port of the claimant.

Footnotes

[\[1\]](#) See References in Text note below.

[\[2\]](#) So in original. Probably should be "subsequently".

with section 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 10, 2004.

James J. Jochum,
Assistant Secretary for Import Administration.

Appendix: Issues in the Final Decision Memorandum

- Comment 1: The Use of Adverse Facts Available
- Comment 2: Starting Point for Calculation of Export Price
- Comment 3: Freight Deduction to Calculation of Export Price
- Comment 4: Surrogate Values for the Ocean Freight Deduction
- Comment 5: Multi-Stage Factors of Production
- Comment 6: THFA Production Starting Point
- Comment 7: Furfural Value
- Comment 8: Values for Dregs and Residue
- Comment 9: Value for Hydrogen
- Comment 10: Packing Value

[FR Doc. 04-13817 Filed 6-17-04; 8:45 am]

BILLING CODE 3510-25-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061404E]

Proposed Information Collection; Comment Request; Tag Recapture Card

AGENCY: National Oceanic and Atmospheric Administration (NOAA).
ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 17, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Eric Orbesen, 1-800-437-3936.

SUPPLEMENTARY INFORMATION:

I. Abstract

The primary objectives of a tagging program are to obtain scientific information on fish growth and movements necessary to assist in stock assessment and management. This is accomplished by the random recapture of tagged fish by fishermen and the subsequent voluntary submission of the appropriate data.

II. Method of Collection

The recapture cards will be sent out to the constituents who will fill out the cards with the pertinent information when and if they recapture a tagged fish and mail the cards as instructed on the card.

III. Data

OMB Number: 0648-0259.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 240.

Estimated Time Per Response: .033 hours (2 minutes).

Estimated Total Annual Burden Hours: 8 hours.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 10, 2004.

Gwellnar Banks,
Management Analyst, Office of the Chief Information Officer.
[FR Doc. 04-13803 Filed 6-17-04; 8:45 am]
BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061504B]

Proposed Information Collection; Comment Request; Fishermen's Contingency Fund

AGENCY: National Oceanic and Atmospheric Administration (NOAA).
ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 17, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Charles L. Cooper, Financial Services Division, F/MB5, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910, phone 301-713-2396.

SUPPLEMENTARY INFORMATION:

I. Abstract

U.S. commercial fishermen may file claims for compensation for losses of or damage to fishing gear or vessels, plus 50 percent of resulting economic losses, attributable to oil and gas activities on the U.S. outer continental shelf. To obtain compensation applicants must comply with requirements set forth in 50 CFR part 296. The requirements include a report within 15 days of the date the vessel first returns to port after the incident to gain a presumption of eligible causation and an application form.

II. Method of Collection

Paper forms are used.

III. Data

OMB Number: 0648-0082.

Form Number: NOAA Forms 88-164, 88-166.

Type of Review: Regular submission.

Affected Public: Individuals or households, and Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 10 hours for an application, and 5 minutes for a 15-day report.

Estimated Total Annual Burden Hours: 1,008.

Estimated Total Annual Cost to Public: \$500.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 10, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04-13804 Filed 6-17-04; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061004D]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: This notice advises the public that the Nez Perce Indian Tribe has submitted a Tribal resource management plan (Tribal Plan) to NMFS pursuant to the limitation on take prohibitions for actions conducted under Tribal Plans promulgated under the Endangered Species Act (ESA). The Tribal Plan specifies the management of recreational, ceremonial, and subsistence fisheries in 2004 in the Imnaha River subbasin in the State of Oregon that potentially affect Snake River spring/summer chinook salmon listed as threatened under the ESA. This document serves to notify the public of the availability for comment of the proposed evaluation of the Secretary of Commerce (Secretary) as to whether implementation of the Tribal Plan will appreciably reduce the likelihood of survival and recovery of Snake River salmon and steelhead, and the availability for public comment of a draft environmental assessment on the proposed action.

DATES: Written comments on the Secretary's pending determination and the draft assessment must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight time on July 6, 2004.

ADDRESSES: Written comments and requests for copies of the Proposed Evaluation and Pending Determination document and the draft Environmental Assessment should be addressed to Herb Pollard, Sustainable Fisheries Division, 10215 W. Emerald St. Suite 180, Boise, ID 83704. Comments may also be sent via fax to (208) 378-5699. The documents are also available on the Internet at www.nwr.noaa.gov. Comments on this draft EA may be submitted by e-mail. The mailbox address for providing e-mail comments is Imnaha04.nwr@noaa.gov. Include in the subject line the following document identifier: "Imnaha 2004 chinook". Comments may also be submitted electronically through the Federal e-Rulemaking portal:

www.regulations.gov. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (208) 378-5614.

FOR FURTHER INFORMATION CONTACT:

Herb Pollard at phone number: (208) 378-5614, or e-mail: herbert.pollard@noaa.gov.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Imnaha River subbasin population of the Snake River Spring/Summer Chinook salmon (*Oncorhynchus tshawytscha*) and Snake River steelhead (*Oncorhynchus mykiss*) Evolutionarily Significant Units (ESU).

Background

The Nez Perce Tribe has submitted to NMFS a Tribal Plan for recreational, ceremonial, and subsistence fisheries in 2004 potentially affecting threatened Snake River spring/summer chinook salmon in the Imnaha River basin. The Tribal Plan includes recreational fisheries specified by the Oregon Department of Fish and Wildlife that take place in the same waters and in the same time frame as the tribal ceremonial and subsistence fisheries. The Nez Perce Tribe and the State of Oregon have co-manager responsibilities for spring chinook salmon within the Imnaha River sub-basin and manage this salmon population under cooperative agreements. The objective of the Tribal Plan is to harvest spring chinook salmon in a manner that does not appreciably reduce the likelihood of survival and recovery of the ESU. Impact levels on the listed spring chinook populations in the ESU are specified in the Tribal Plan. Analysis of the predicted return of naturally and hatchery-produced spring chinook salmon to the Imnaha River basin in 2004 and the proposed harvest levels indicate that all hatchery brood stock and supplemental spawning and natural spawning escapement needs will be met after the proposed fisheries. A variety of monitoring and evaluation tasks to be conducted by the co-managers is specified in the Tribal Plan to assess the abundance of spring chinook and to determine fishery effort and catch of spring chinook. A comprehensive review of the Tribal Plan to evaluate whether the fisheries and listed spring chinook populations are performing as expected will be done within and at the end of the proposed 2004 season.

As required by the ESA 4(d) rule for Tribal Plans (65 FR 42481, July 10, 2000 [50 CFR 223.209]), the Secretary is seeking public comment on his pending determination as to whether the Tribal Plan for Imnaha River chinook salmon would appreciably reduce the likelihood of survival and recovery of the threatened Snake River spring/summer chinook salmon ESU.

Authority

Under section 4 of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of the species listed as threatened. The ESA Tribal 4(d) Rule (65 FR 42481, July 10, 2000 [50 CFR 223.209]) states that the ESA section 9 take prohibitions will not apply to Tribal Plans that will not appreciably reduce the likelihood of